

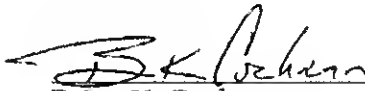
CERTIFICATE OF SERVICE

I, Brian K. Cochran, of counsel for defendant Municipal Water Works in the above-captioned civil action, hereby certify that on the 20th day of July, 2018, I served the foregoing ANSWER OF DEFENDANT MUNICIPAL WATER WORKS upon Adam D. Taylor and Stephen P. New, counsel for plaintiffs, by depositing a true copy thereof into the United States mail, postage prepaid, in an envelope addressed as follows:

Adam D. Taylor, Esquire (WVSB# 11713)
United Building – Mezzanine Office
129 Main Street
Beckley, West Virginia 25801
adamtaylorlaw@gmail.com

and

Stephen P. New, Esquire (WVSB# 7756)
Amanda J. Taylor, Esquire (WVSB# 11635)
The Law Office of Stephen P. New
114 Main Street
Post Office Box 5516
Beckley, West Virginia 25801
Counsel for Plaintiffs



Brian K. Cochran
David M. Kersey
Counsel for Defendants

**CIVIL CASE INFORMATION STATEMENT
CIVIL CASES**

In the Circuit Court of Wyoming County, West Virginia

I. CASE STYLE

Plaintiffs:

Case # 18-C-66

JUDGE McGraw

Sherman Taylor, on behalf of a class of similarly situated individuals, and David and Joanna Bailey, individually and as the parents and next friends of Benjamin Bailey, on behalf of a class of similarly situated individuals,

v.

Defendants:

Days to
Answer

Type of Service

MUNICIPAL WATER WORKS
c/o Corbet Justus
220 Appalachian Hwy
Pineville, WV 24874

30

Personal

and

c/o Linda Phillips
Pineville City Hall
296 Appalachian Hwy
P.O. Box 220
Pineville, WV 24874

FILED
2018 JUN 19 P 1:30
CLERK OF COURT
WYOMING COUNTY, WV

Original and four (3) copies of COMPLAINT furnished herewith.

PLAINTIFFS: Sherman Taylor, et al.
DEFENDANT: Municipal Water Works

CIVIL ACTION NO. 18-C-

II. TYPE OF CASE:

TORTS	OTHER	CIVIL
<input type="checkbox"/> Asbestos	<input type="checkbox"/> Adoption	<input type="checkbox"/> Appeal from Magistrate Ct
<input type="checkbox"/> Professional Malpractice	<input type="checkbox"/> Contract	<input type="checkbox"/> Petition for Modification of Magistrate Sentence
<input checked="" type="checkbox"/> Personal Injury -	<input type="checkbox"/> Real Property	<input type="checkbox"/> Miscellaneous Civil
<input type="checkbox"/> Product Liability	<input type="checkbox"/> Mental Health	<input type="checkbox"/> Other - Medical Malpractice
<input type="checkbox"/> Other Tort	<input type="checkbox"/> Appeal of Administrative Agency	

III. JURY DEMAND: ☒ Yes ☐ No

CASE WILL BE READY FOR TRIAL BY (MONTH/YEAR): June/2019

IV. DO YOU OR ANY OF YOUR CLIENTS OR WITNESSES IN THIS CASE REQUIRE SPECIAL ACCOMMODATIONS DUE TO A DISABILITY OR AGE? ☐ YES ☒ NO
IF YES, PLEASE SPECIFY:

- ☐ Wheelchair accessible hearing room and other facilities
- ☐ Interpreter or other auxiliary aid for the hearing impaired
- ☐ Reader or other auxiliary aid for the visually impaired
- ☐ Spokesperson or other auxiliary aid for the speech impaired
- ☐ Other: _____

Attorney Name: Stephen P. New, Esq.
Amanda J. Taylor, Esq.

114 Main Street, Beckley, WV 25801
(304) 250-6017

Representing: ☒ Plaintiff

☐ Defendant

And

☐ Cross-Complainant

☐ Cross-Defendant

Adam D. Taylor, Esq.
United Building -- Mezzanine Office, 129 Main St., Beckley, WV 25801
(304) 894-8733

Signature



Dated: June 19, 2018

SUMMONS

IN THE CIRCUIT COURT OF WYOMING COUNTY, WEST VIRGINIA

SHERMAN TAYLOR, on behalf of a class of similarly situated individuals, and DAVID and JOANNA BAILEY, Individually and as the parents and next friends of BENJAMIN BAILEY, on behalf of a class of similarly situated individuals,

Class Action Plaintiffs,

v.

Civil Action No.

18-C-66

MUNICIPAL WATER WORKS, a political subdivision, and JOHN DOE, INC.,

Defendants.

To the above-named party:

**Municipal Water Works
c/o Corbet Justus
220 Appalachian Hwy
Pineville, WV 24874**

SERVICE OF THE SUMMONS AND COMPLAINT

IN THE NAME OF THE STATE OF WEST VIRGINIA, you are hereby Summoned and required to serve upon **STEPHEN P. NEW, ATTORNEY AT LAW**, Plaintiff's attorney, whose address is **P.O. BOX 5516, Beckley, WV 25801**, an answer, including any related counterclaim you may have, to the complaint filed against you in the above styled civil action, a true copy of which is herewith delivered to you. You are required to serve your answer within **30 days** after service of this summons upon you exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint and you will be thereafter barred from asserting in another action any claim you may have which must be asserted by counterclaim in the above styled civil action.

Dated: 6-19-18

Clerk of the Court:

David Stover 157

SUMMONS

IN THE CIRCUIT COURT OF WYOMING COUNTY, WEST VIRGINIA

SHERMAN TAYLOR, on behalf of a class of similarly situated individuals, and DAVID and JOANNA BAILEY, Individually and as the parents and next friends of BENJAMIN BAILEY, on behalf of a class of similarly situated individuals,

Class Action Plaintiffs,

v.

Civil Action No.

18-C-66

MUNICIPAL WATER WORKS, a political subdivision, and JOHN DOE, INC.,

Defendants.

To the above-named party:

**Municipal Water Works
c/o Linda Phillips
Pineville City Hall
296 Appalachian Hwy
P.O. Box 220
Pineville, WV 24874**

SERVICE OF THE SUMMONS AND COMPLAINT

IN THE NAME OF THE STATE OF WEST VIRGINIA, you are hereby Summoned and required to serve upon **STEPHEN P. NEW, ATTORNEY AT LAW**, Plaintiff's attorney, whose address is **P.O. BOX 5516, Beckley, WV 25801**, an answer, including any related counterclaim you may have, to the complaint filed against you in the above styled civil action, a true copy of which is herewith delivered to you. You are required to serve your answer within **30 days** after service of this summons upon you exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint and you will be thereafter barred from asserting in another action any claim you may have which must be asserted by counterclaim in the above styled civil action.

Dated: 6-19-18

Clerk of the Court:-

• David Storer 137

IN THE CIRCUIT COURT OF WYOMING COUNTY, WEST VIRGINIA

SHERMAN TAYLOR, on behalf of a class of similarly situated individuals, and DAVID and JOANNA BAILEY, Individually and as the parents and next friends of BENJAMIN BAILEY, on behalf of a class of similarly situated individuals,

Class Action Plaintiffs,

v.

Civil Action No.

18-C-66

MUNICIPAL WATER WORKS, a political subdivision, and JOHN DOE, INC.,

Defendants.

CLASS ACTION COMPLAINT

COME NOW Plaintiffs Sherman Taylor, individually and on behalf of a class of similarly situated individuals, and David and Joanna Bailey, individually and as the parents and next friends of Benjamin Bailey, on behalf of a class of similarly situated individuals, by undersigned counsel, and for their Class Action Complaint state and aver as follows:

NATURE OF THE CASE

1. This is a class action lawsuit brought by Plaintiff Sherman Taylor, on behalf of a class of all similarly situated individuals, and David and Joanna Bailey, individually and as the parents and next friends of Benjamin Bailey, on behalf of a class of similarly situated individuals.

2. Each putative class representative and each putative class member was a customer of Defendant Municipal Water Works [hereinafter "Pineville Municipal Water"] in the relevant time frame and, as a result, was exposed to illness causing pollutants in their water supply.

FILED
JUN 18 2018
P 1:30
CLERK

3. As a direct and proximate result of Plaintiffs and the Class Members being exposed to illness causing pollutants in the water supplied by Defendant, they were placed at an increased risk of illnesses including, but not limited to, kidney and liver disease, failure, and/or cancer.

4. As a direct and proximate result of Plaintiff and a certain subset of Class Members being exposed to illness causing pollutants in the water supplied by Defendant, they developed, were diagnosed with, and/or were treated for illnesses including, but not limited to, kidney and liver disease, failure, or cancer.

5. This class action seeks damages, punitive damages, costs, establishment of a medical monitoring fund, attorneys' fees, and other relief as a result of Defendant's conduct described herein.

PARTIES

6. Plaintiff Sherman Taylor was at all times relevant hereto a resident of Pineville, Wyoming County, West Virginia.

7. Plaintiff Sherman Taylor was a customer of Defendant Pineville Municipal Water, who supplied his water during the time in issue.

8. Plaintiff Sherman Taylor was diagnosed with and treated for kidney cancer in the relevant time period.

9. Plaintiffs David and Joanna Bailey, individually and as the parents and next friends of Benjamin Bailey, were residents of Pineville, Wyoming County, West Virginia, at all times relevant hereto.

10. Plaintiffs David and Joanna Bailey, individually and as the parents and next friends of Benjamin Bailey, were customers of Pineville Municipal Water which supplied their water at all times relevant hereto.

11. Defendant Pineville Municipal Water is a political subdivision that, at all times relevant hereto, supplied water to Plaintiffs and Class Members.

12. To the extent Pineville Municipal Water is found to be otherwise immune from suit under the laws of the State of West Virginia, Plaintiffs assert that they seek only such damages as will be paid within and up to the limits of any applicable policy of insurance providing coverage for the allegations set forth herein.

13. The name and capacity of the defendant(s) sued herein as John Doe, Inc., is currently unknown to Plaintiffs, who therefore sue the defendant(s) by such fictitious names. The defendant(s) designated herein as a Doe is legally responsible in some manner for the unlawful acts referred to herein, including but not limited to intentionally or negligently permitting illness causing pollutants to contaminate the water supplied by Defendant Pineville Municipal Water to Plaintiffs and Class Members. Plaintiffs will seek leave of the Court to amend this Complaint to reflect the true names and capacities of the defendant(s) designated herein as Doe when such defendant(s) become known.

JURISDICTION AND VENUE

14. Jurisdiction and venue are proper in the Circuit Court of Wyoming County, West Virginia.

FACTS

15. Plaintiffs incorporate herein by reference all preceding paragraphs of their Complaint as if set forth herein verbatim.

16. Plaintiffs and all Class members were customers of Defendant Pineville Municipal Water.

17. Defendant had a duty to monitor Plaintiffs' and Class Members' water on a regular basis.

18. The purpose of such monitoring is to ensure water quality and to protect the individuals whose water is supplied by Defendant.

19. Defendant had a duty to provide safe and clean water to Plaintiffs and Class Members.

20. From Defendant's facilities to Plaintiffs' and Class Members' homes, Defendant has exclusive control over the water it provides to its customers.

21. During 2016, Defendant was cited in excess of twenty-five (25) times for violations ranging from positive tests above the recommended limit for Haloacetic Acids to Chlorine to Coliform.

22. By letter dated June 14, 2018, Defendant informed its customers that "our water system violated drinking water monitoring requirements within the last year(s). Even though these were not emergencies, you as our customers have the right to know what happened and what we did to correct the situation."

23. During numerous periods between January 1, 2017, and December 31, 2017, Defendant breached its duty by failing to monitor Plaintiffs' and Class Members' water on a regular basis.

24. Subsequent test results revealed that the water supplied by Defendant exceeded the standard or maximum level of MCL for total Trihalomethanes and Haloacetic Acids.

25. Trihalomethanes, Haloacetic Acids, Chlorine, and Coliform have known adverse health effects including, but not limited to, increased risk of cancer, heart problems, asthma, cell damage, adverse reproductive outcomes, and skin and eye irritation.

26. In approximately May of 2017, Plaintiff Sherman Taylor was diagnosed with kidney cancer, requiring medical care and removal of the affected kidney, along with follow up care, and the need for future medical monitoring.

27. Plaintiff and class members will require continual medical monitoring in order to assess the effects of the illness causing pollutants in their water supply to their long term health and well-being.

CLASS ACTION ALLEGATIONS

28. Plaintiffs seek to bring the claims below as a class action pursuant to Rule 23 of the West Virginia Rules of Civil Procedure, on behalf of themselves and all others similarly situated.

29. The first sub-class ["Sub-Class One"] is defined as:

All customers of Pineville Municipal Water who were exposed to illness causing pollutants and subsequently suffered and were treated for adverse health effects.

30. The second sub-class ["Sub-Class Two"] is defined as:

All customers of Pineville Municipal Water who were exposed to illness causing pollutants and require medical monitoring for adverse health effects.

31. Plaintiffs reserve the right to re-define the sub-classes, which are collectively referred to herein sometimes as the "Class".

32. Numerosity: The number of persons who are members of the Class, as described above, is so numerous that joinder of all members in one action is impracticable.

33. Predominance: Questions of law and fact that are common to the entire Class predominate over individual questions because the actions of Defendant complained of herein were generally applicable to the entire Class. These legal and factual questions include, but are not limited to:

- a. Whether Plaintiff and Class Members' increased risk of adverse health effects was caused by Defendant's negligence;
- b. Whether Plaintiff and Class Members' adverse health effects were caused by Defendant's negligence;
- c. Whether Defendant is legally responsible for damages incurred by Plaintiffs and the Class Members; and
- d. Whether Plaintiffs and the Class Members are entitled to punitive damages.

34. Commonality: All questions, actions, and inactions by Defendant at issue are similarly common. A determination of Defendant's inspection, testing, and monitoring procedures will apply to all members of the Class. Further, whether Defendant violated any applicable state laws and pursued the course of conduct complained of herein, whether Defendant acted intentionally or recklessly in engaging in the conduct described herein, and the extent of the appropriate measure of declaratory relief, damage, and restitution are common questions to the class.

35. Typicality: Plaintiffs' claims are typical of the members of the Class. Plaintiffs were customers of Defendant during the relevant time period. Plaintiff, like all members of the class have suffered exposure and/or harm associated with illness causing pollutants in their water supply, including exposure to the pollutants expressly named herein, the increased risk of adverse health effects, and/or treatment for adverse health effects. Further, Plaintiffs, like all members of the Class were exposed to all such risks as a result of the use and consumption of water supplied by Defendant.

36. Adequacy of Representation: Plaintiffs will fully and adequately represent and protect the interest of the Class because of the common injuries and interests of the members of

the Class and the singular conduct of Defendant that is or was applicable to all members of the Class. Plaintiffs have retained counsel who are competent and experienced in the prosecution of class action litigation. Plaintiffs have no interest that is contrary to or in conflict with those of the Class they seek to represent.

37. The claims of the Class may be certified under Rule 23. The members of the Class seek sizeable monetary relief.

COUNT I
NEGLIGENCE

38. Plaintiffs incorporate herein by reference all preceding paragraphs of the Complaint as if set forth fully herein verbatim.

39. Defendant is a political subdivision responsible for supplying water to Plaintiffs and Class Members.

40. Defendant was under a duty to inspect, monitor, and test the water supplied to Plaintiffs and Class Members in order to ensure that it did not contain excessive or unlawful levels of illness causing pollutants.

41. Defendant breached this duty by its failure to conduct required inspections, monitoring, and testing.

42. As a direct and proximate result of Defendant's negligence Plaintiffs have suffered or are at increased risk of suffering adverse health effects.

43. The negligence of Defendant directly and proximately caused damages and losses to Plaintiff and the Class Members.

44. The negligence of Defendant caused Plaintiff and the Class Members to be subjected to medical testing and procedures along with anxiety emotional distress, and medical

treatment in the past and future, resultant of the adverse health effects secondary to consumption and use of polluted water.

45. The negligence of Defendant caused harm to Plaintiffs and the Class Members as described herein.

COUNT II
PRIMA FACIE NEGLIGENCE

46. Plaintiffs incorporate herein by reference all preceding paragraphs of the Complaint as if set forth fully herein verbatim.

47. Defendant is required by federal and state law to test, monitor, and inspect its water supply at regular intervals.

48. Defendant violated clearly established federal and state law in their failure to test, monitor, and inspect its water supply at regular intervals.

49. Defendant's violation of the law, which was specifically designed to protect Plaintiffs and Class Members, constitutes *prima facie* negligence.

50. Defendant's negligence was the direct and proximate cause of Plaintiffs' and Class Members' injuries and damages as set forth herein.

COUNT III
MEDICAL MONITORING

51. Plaintiffs incorporate herein by reference all preceding paragraphs of their Complaint as if set forth fully herein verbatim.

52. The latency period for the adverse health effects brought on by exposure to illness causing pollutants water can be extensive.

53. Plaintiffs and the Class Members have been exposed to water pollutants at a higher rate than, or in substantially more dangerous manner than, the general population. Plaintiffs' and the Class Members' exposure levels are, therefore, substantial in nature.

54. Plaintiffs' and the Class Members' exposure to water pollutants was caused by Defendant's negligence.

55. Plaintiffs' and the Class Members' exposure to water pollutants was directly and proximately caused by Defendants' negligence as described herein.

56. Monitoring procedures exist that make the detection of adverse health effects brought on by exposure to and consumption of illness causing pollutants in water possible.

57. Adverse health conditions brought on by exposure to and consumption of illness causing pollutants in water are often capable of early detection by way of existing scientific methods of monitoring, screening, and testing.

58. Because such screening, monitoring, and testing is not conducted in the absence of exposure, the prescribed monitoring regime is different from that normally recommended in the absence of exposure. Plaintiff and the Class Members require specialized screening not within the purview of routine medical exams

59. According to cotemporary scientific principles, the prescribed monitoring regime is reasonable and necessary to permit early diagnosis leading to benefits in treatment, management, and prevention or mitigation of long-term health consequences, including death.

WHEREFORE, Plaintiffs and Class Members pray that this case be certified and maintained as a class action and for judgment to be entered upon Defendants as follows:


- a. For economic and compensatory damages on behalf of Plaintiffs and all Class Members;

- b. For establishment of a medical monitoring fund as requested herein;
- c. For restitution;
- d. For actual damages sustained;
- e. For punitive damages;
- f. For attorneys' costs and fees;
- g. For such other and further relief as allowable under West Virginia law or as the Court deems just and proper.

A TRIAL BY JURY IS DEMANDED.

CLASS ACTION PLAINTIFFS,

By counsel



Adam D. Taylor (WVSB#11713)
United Building - Mezzanine Office
129 Main St.
Beckley, WV 25801
T: 304-894-8733
F: 681-245-6236
adamtaylorlaw@gmail.com

and

Stephen P. New (WVSB #7756)
Amanda J. Taylor (WVSB #11635)
The Law Office of Stephen P. New
114 Main Street
Post Office Box 5516
Beckley, West Virginia 25801
(304) 250-6017 Phone
(304) 250-6012 Fax

IN THE CIRCUIT COURT OF WYOMING COUNTY, WEST VIRGINIA

SHERMAN TAYLOR, on behalf of a class of
similarly situated individuals, and DAVID
and JOANNA BAILEY, Individually and as
the parents and next friends of BENJAMIN
BAILEY, on behalf of a class of similarly
situated individuals,

Class Action Plaintiffs,

v.

Civil Action No. 18-C-66

MUNICIPAL WATER WORKS, a
political subdivision, and JOHN DOE, INC.,


Defendants.

VERIFICATION

STATE OF WEST VIRGINIA

COUNTY OF WYOMING

DAVID BAILEY, having been duly sworn, upon oath, deposes and says that the
statements and allegations contained in the foregoing *Class Action Complaint* are true,
except insofar as they are stated therein to be "upon information and belief," and insofar
as they are stated to be "upon information and belief," he believes them to be true.


David Bailey, individually and on behalf
of Benjamin Bailey

Taken, subscribed, and sworn to before me the undersigned authority this 19th day of
June, 2018.

My commission expires Sept. 29, 2021


Notary Public

IN THE CIRCUIT COURT OF WYOMING COUNTY, WEST VIRGINIA

SHERMAN TAYLOR, on behalf of a class of similarly situated individuals, and DAVID and JOANNA BAILEY, Individually and as the parents and next friends of BENJAMIN BAILEY, on behalf of a class of similarly situated individuals,

FILED
2016 JUL -6 P 1:32

CLERK OF
WYOMING COUNTY, WV

Class Action Plaintiffs,

v.

**CIVIL ACTION NO.: 18-C-66
The Honorable Warren R. McGraw**

MUNICIPAL WATER WORKS, a political subdivision, and JOHN DOE, Inc.,

Defendants.

**DEFENDANT'S MOTION TO EXTEND DEADLINE
TO FILE ANSWER TO CLASS ACTION COMPLAINT**

COMES NOW the Defendants, Municipal Water Works, by the town attorney for Municipal Water Works, Lindsey C. Ashley, Esq., of Kirby & Ashley, L.C. and moves this Court to extend the deadline to file an answer to the class action complaint for thirty (30) additional days on the following grounds:

1. The Defendants have forwarded the Class Action Complaint to the appropriate insurance provider to review.
2. Said insurance provider has requested an additional thirty (30) days to investigate the claim.

WHEREFORE, the Defendants, by town attorney, pray that this Honorable Court extend the deadline to file an answer for an additional thirty (30) days; and for any further relief this Court may deem just and proper.

**MUNICIPAL WATER WORKS,
By Town Attorney**



LINDSEY C. ASHLEY, ESQ.

*Attorney for Town of Pineville &
Municipal Water Works*

**207 South Heber Street, Suite 1B
Beckley, WV 25801
(304) 860-1907**

2018 JUL -6 P 1:32
CLERK OF
WYOMING COUNTY, WV

FILED

IN THE CIRCUIT COURT OF WYOMING COUNTY, WEST VIRGINIA

SHERMAN TAYLOR, on behalf of a class of similarly situated individuals, and DAVID and JOANNA BAILEY, Individually and as the parents and next friends of BENJAMIN BAILEY, on behalf of a class of similarly situated individuals,

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v.

CIVIL ACTION NO.: 18-C-66
The Honorable Warren R. McGraw

MUNICIPAL WATER WORKS, a political subdivision, and JOHN DOE, Inc.,


Defendants.

CERTIFICATE OF SERVICE

I, Lindsey C. Ashley, hereby certify that true and exact copies of the *Defendants Motion to Extend Deadline to Answer Class Action Complaint* has been served upon the following parties by United States mail postage, prepaid, and via facsimile on this, the 6th day of July, 2018.

Adam D. Taylor, Esq.
United Building - Mezzanine Office
129 Main Street
Beckley, WV 25801

Stephen P. New, Esq.
Amanda J. Taylor, Esq.
114 Main Street
Beckley, WV 25801


Lindsey C. Ashley, Esq.
WV Bar ID: 12211
207 South Heber St. Suite 1B
Beckley, WV 25801
lindsey@kgalawwv.com
Phone: (304) 860-1907

FILED
2018 JUL -6 P 1:32
CIRCUIT COURT OF
WYOMING COUNTY, WV

AFFIDAVIT OF PROCESS SERVER

IN THE CIRCUIT COURT OF WYOMING COUNTY, WEST VIRGINIA

**SHERMAN TAYLOR, on behalf of a class of
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the parents and next friends of BENJAMIN
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Plaintiffs,**

v.

CIVIL ACTION NUMBER: 18-C-66

**MUNICIPAL WATER WORKS, a
political subdivision, and JOHN DOE, INC.,
Defendants.**

I, Steven W. Bostic, being first duly sworn, depose and say: that I am over the age of 18 years and not a party to this action and that within the boundaries of the state where service was affected, I was authorized by law to perform said service.

SERVICE: Service on **LINDA PHILLIPS** of the Summons and Complaint relative to the above-styled matter was accomplished by hand delivery to Linda Phillips at her place of business, Phillips Extermination, 100 Cherry Street, Pineville, Wyoming County, WV on the 21st day of June, 2018 at 1:05 p.m.

MANNER OF SERVICE: hand delivery to Linda Phillips at her place of business, Phillips Extermination, 100 Cherry Street, Pineville, Wyoming County, WV on the 21st day of June, 2018 at 1:05 p.m.

SERVICE WAS ACCOMPLISHED: on the 21st day of June, 2018 at 1:05 p.m.

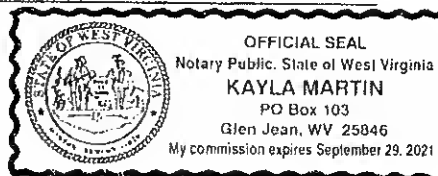
Signature of Process Server:

Steven W. Bostic
Steven W. Bostic

SUBSCRIBED AND SWORN to before me this 21st day of June, 2018
NOTARY PUBLIC for the state of WV My Commission Expires 9/29/2021

Signature of Notary

Kayla Martin



SUMMONS

IN THE CIRCUIT COURT OF WYOMING COUNTY, WEST VIRGINIA

SHERMAN TAYLOR, on behalf of a class of
similarly situated individuals, and DAVID
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BAILEY, on behalf of a class of similarly
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Class Action Plaintiffs,

v.

Civil Action No.

18-C-66

MUNICIPAL WATER WORKS, a
political subdivision, and JOHN DOE, INC.,

Defendants.

To the above-named party:

Municipal Water Works
c/o Linda Phillips
Pineville City Hall
296 Appalachian Hwy
P.O. Box 220
Pineville, WV 24874

2018 JUL 12 A 10 52
CLERK OF THE COURT
WYOMING COUNTY, WV

SERVICE OF THE SUMMONS AND COMPLAINT

IN THE NAME OF THE STATE OF WEST VIRGINIA, you are hereby Summoned and required to serve upon STEPHEN P. NEW, ATTORNEY AT LAW, Plaintiff's attorney, whose address is P.O. BOX 5516, Beckley, WV 25801, an answer, including any related counterclaim you may have, to the complaint filed against you in the above styled civil action, a true copy of which is herewith delivered to you. You are required to serve your answer within 30 days after service of this summons upon you exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint and you will be thereafter barred from asserting in another action any claim you may have which must be asserted by counterclaim in the above styled civil action.

Dated: 6-19-18

Clerk of the Court:-

By: David Stover 187

AFFIDAVIT OF PROCESS SERVER

IN THE CIRCUIT COURT OF WYOMING COUNTY, WEST VIRGINIA

**SHERMAN TAYLOR, on behalf of a class of
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and JOANNA BAILEY, Individually and as
the parents and next friends of BENJAMIN
BAILEY, on behalf of a class of similarly
situated individuals,**

Plaintiffs,

v.

CIVIL ACTION NUMBER: 18-C-66

**MUNICIPAL WATER WORKS, a
political subdivision, and JOHN DOE, INC.,
Defendants.**

I, Steven W. Bostic, being first duly sworn, depose and say: that I am over the age of 18 years and not a party to this action and that within the boundaries of the state where service was affected, I was authorized by law to perform said service.

SERVICE: Service on **CORBET JUSTUS** of the Summons and Complaint relative to the above-styled matter was accomplished by hand delivery to Corbet Justus at his place of employment, Municipal Water Works, 220 Appalachian Highway, Pineville, Wyoming County, WV on the 21st day of June, 2018 at 11:25 a.m.

MANNER OF SERVICE: hand delivery to Corbet Justus at his place of employment, Municipal Water Works, 220 Appalachian Highway, Pineville, Wyoming County, WV on the 21st day of June, 2018 at 11:25 a.m.

SERVICE WAS ACCOMPLISHED: on the 21st day of June, 2018 at 11:25 a.m.

Signature of Process Server:

Steven W. Bostic

Steven W. Bostic

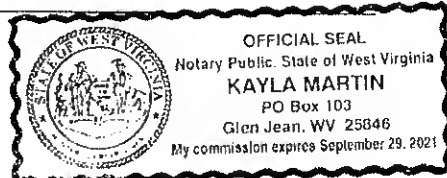
Steven W. Bostic

SUBSCRIBED AND SWORN to before me this 21st day of June, 2018

NOTARY PUBLIC for the state of WV My Commission Expires 9/29/2021

Signature of Notary

Kayla Martin



SUMMONS

IN THE CIRCUIT COURT OF WYOMING COUNTY, WEST VIRGINIA

**SHERMAN TAYLOR, on behalf of a class of
similarly situated individuals, and DAVID
and JOANNA BAILEY, Individually and as
the parents and next friends of BENJAMIN
BAILEY, on behalf of a class of similarly
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Class Action Plaintiffs,

v.

Civil Action No.

18-C-66

**MUNICIPAL WATER WORKS, a
political subdivision, and JOHN DOE, INC.,**

Defendants.

To the above-named party:

**Municipal Water Works
c/o Corbet Justus
220 Appalachian Hwy
Pineville, WV 24874**

SERVICE OF THE SUMMONS AND COMPLAINT

**IN THE NAME OF THE STATE OF WEST VIRGINIA, you are hereby Summoned and
required to serve upon STEPHEN P. NEW, ATTORNEY AT LAW, Plaintiff's attorney, whose
address is P.O. BOX 5516, Beckley, WV 25801, an answer, including any related counterclaim
you may have, to the complaint filed against you in the above styled civil action, a true copy of
which is herewith delivered to you. You are required to serve your answer within **30 days** after
service of this summons upon you exclusive of the day of service. If you fail to do so, judgment
by default will be taken against you for the relief demanded in the complaint and you will be
thereafter barred from asserting in another action any claim you may have which must be asserted
by counterclaim in the above styled civil action.**

Dated: 6-19-18

Clerk of the Court:

David Storer 57

FILED
2018 JUN 12 A 10:56
CLERK OF THE COURT
WYOMING COUNTY, WV

IN THE CIRCUIT COURT OF WYOMING COUNTY, WEST VIRGINIA

SHERMAN TAYLOR, on behalf of a class of
similarly situated individuals and DAVID
and JOANNA BAILEY, individually and as
the parents and next friends of BENJAMIN
BAILEY, on behalf of a class of similarly
situated individuals,

Plaintiffs,

v.

CIVIL ACTION NO.: 18-C-66

MUNICIPAL WATER WORKS, a
Political subdivision, and JOHN DOE,
INC.,

Defendants.

ANSWER OF DEFENDANT MUNICIPAL WATER WORKS

COMES NOW the Municipal Water Works, by counsel, and for its answer
to Plaintiffs' Complaint states as follows:

1. This defendant asserts that the allegations contained in numbered paragraph 1 of the Complaint are not statements of fact, and therefore, no answer of this defendant to this paragraph is required. To the extent that an answer is deemed to be required of this defendant to this paragraph, this defendant denies the same.
2. This defendant denies the allegations contained in numbered paragraph 2 of the Complaint.
3. This defendant denies the allegations contained in numbered paragraph 3 of the Complaint.
4. This defendant denies the allegations contained in numbered paragraph 4 of the Complaint.
5. This defendant denies that plaintiffs are entitled to the damages and relief sought contained in numbered paragraph 5 of the Complaint from this defendant.

6. Upon information and belief, this defendant admits the allegations contained in numbered paragraph 6 of the Complaint.

7. Upon information and belief, this defendant admits the allegations contained in numbered paragraph 7 of the Complaint.

8. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in numbered paragraph 8 of the Complaint. Therefore, those allegations are denied.

9. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in numbered paragraph 9 of the Complaint. Therefore, those allegations are denied.

10. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in numbered paragraph 10 of the Complaint. Therefore, those allegations are denied.

11. This defendant admits that it is a political subdivision but is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in numbered paragraph 11 of the Complaint. Therefore, those remaining allegations are denied.

12. This defendant denies that plaintiffs are entitled to the damages and relief sought contained in numbered paragraph 12 of the Complaint from this defendant.

13. In response to numbered paragraph 13 of the Complaint, this defendant asserts that the allegations of said paragraph are not directed to this defendant, therefore no answer of this defendant is required. To the extent that an answer is deemed to be required of this defendant to this paragraph, this defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in numbered paragraph 13 of the Complaint. Therefore, those allegations are denied.

14. Upon information and belief, this defendant admits the allegations contained in numbered paragraph 14 of the Complaint.

15. In response to numbered paragraph 15 of the Complaint, this defendant repeats, incorporates and hereby references its responses to the allegations contained in numbered paragraphs 1 through 14 of the Complaint, as if fully set forth herein.

16. This defendant denies the allegations contained in numbered paragraph 16 of the Complaint.

17. As the allegations contained in Paragraph 17 of the Complaint are allegations of law, rather than of fact, this defendant neither admits nor denies same.

18. Upon information and belief, this defendant admits the allegations contained in numbered paragraph 18 of the Complaint.

19. As the allegations contained in Paragraph 19 of the Complaint are allegations of law, rather than of fact, this defendant neither admits nor denies same.

20. This defendant denies the allegations contained in numbered paragraph 20 of the Complaint.

21. This defendant denies the allegations contained in numbered paragraph 21 of the Complaint.

22. At this time, this defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in numbered paragraph 22 of the Complaint. Therefore, those allegations are denied.

23. This defendant denies the allegations contained in numbered paragraph 23 of the Complaint.

24. This defendant denies the allegations contained in numbered paragraph 24 of the Complaint.

25. This defendant denies the allegations contained in numbered paragraph 25 of the Complaint.

26. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in numbered paragraph 26 of the Complaint. Therefore, those allegations are denied.

27. This defendant denies the allegations contained in numbered paragraph 27 of the Complaint.

28. This defendant asserts that the allegations contained in numbered paragraph 28 of the Complaint are not statements of fact, and therefore, no answer of this defendant to this paragraph is required. To the extent that an answer is deemed to be required of this defendant to this paragraph, this defendant denies the same.

29. This defendant asserts that the allegations contained in numbered paragraph 29 of the Complaint are not statements of fact, and therefore, no answer of this defendant to this paragraph is required. To the extent that an answer is deemed to be required of this defendant to this paragraph, this defendant denies the same.

30. This defendant asserts that the allegations contained in numbered paragraph 30 of the Complaint are not statements of fact, and therefore, no answer of this defendant to this paragraph is required. To the extent that an answer is deemed to be required of this defendant to this paragraph, this defendant denies the same.

31. This defendant asserts that the allegations contained in numbered paragraph 31 of the Complaint are not statements of fact, and therefore, no answer of this defendant to this paragraph is required. To the extent that an answer is deemed to be required of this defendant to this paragraph, this defendant denies the same.

32. This defendant denies the allegations contained in numbered paragraph 32 of the Complaint.

33. This defendant denies the allegations contained in numbered paragraph 33 of the Complaint.

34. This defendant denies the allegations contained in numbered paragraph 34 of the Complaint.

35. This defendant denies the allegations contained in numbered paragraph 35 of the Complaint.

36. This defendant denies the allegations contained in numbered paragraph 36 of the Complaint.

37. This defendant denies the allegations contained in numbered paragraph 37 of the Complaint.

38. In response to numbered paragraph 38 of the Complaint, this defendant repeats, incorporates and hereby references its responses to the allegations contained in numbered paragraphs 1 through 37 of the Complaint, as if fully set forth herein.

39. In response to numbered paragraph 39 of the Complaint, this defendant admits that it is a political subdivision responsible for supplying water to its customers. This defendant denies the remaining allegations contained in numbered paragraph 39.

40. As the allegations contained in Paragraph 40 of the Complaint are allegations of law, rather than of fact, this defendant neither admits nor denies same.

41. This defendant denies the allegations contained in numbered paragraph 41 of the Complaint.

42. This defendant denies the allegations contained in numbered paragraph 42 of the Complaint.

43. This defendant denies the allegations contained in numbered paragraph 43 of the Complaint.

44. This defendant denies the allegations contained in numbered paragraph 44 of the Complaint.

45. This defendant denies the allegations contained in numbered paragraph 45 of the Complaint.

46. In response to numbered paragraph 46 of the Complaint, this defendant repeats, incorporates and hereby references its responses to the allegations contained in numbered paragraphs 1 through 45 of the Complaint, as if fully set forth herein.

47. In response to numbered paragraph 47 of the Complaint, this defendant admits that the State of West Virginia requires it to perform tests on its water. This defendant denies the remaining allegations contained in numbered paragraph 47.

48. This defendant denies the allegations contained in numbered paragraph 48 of the Complaint.

49. This defendant denies the allegations contained in numbered paragraph 49 of the Complaint.

50. This defendant denies the allegations contained in numbered paragraph 50 of the Complaint.

51. In response to numbered paragraph 51 of the Complaint, this defendant repeats, incorporates and hereby references its responses to the allegations contained in numbered paragraphs 1 through 50 of the Complaint, as if fully set forth herein.

52. This defendant denies the allegations contained in numbered paragraph 52 of the Complaint.

53. This defendant denies the allegations contained in numbered paragraph 53 of the Complaint.

54. This defendant denies the allegations contained in numbered paragraph 54 of the Complaint.

55. This defendant denies the allegations contained in numbered paragraph 55 of the Complaint.

56. This defendant denies the allegations contained in numbered paragraph 56 of the Complaint.

57. This defendant denies the allegations contained in numbered paragraph 57 of the Complaint.

58. This defendant denies the allegations contained in numbered paragraph 58 of the Complaint.

59. This defendant denies the allegations contained in numbered paragraph 59 of the Complaint.

60. This defendant denies that plaintiffs are entitled to this action being certified and maintained as a class action and further denies that plaintiffs are entitled to any relief from this defendant contained within the wherefore clause of the Complaint.

61. This defendant denies all allegations contained in the Complaint, not specifically admitted herein.

62. This defendant demands a trial by jury on all issues so triable.

Affirmative Defenses

63. Defendant asserts each and every affirmative defense found in Rule 8(c) of the West Virginia Rules of Civil Procedure, as if each such defense were fully set forth herein, verbatim.

64. Plaintiffs' Complaint should be dismissed in whole or in part pursuant to Rule 12(b)(6) of the West Virginia Rules of Civil Procedure for failing to state a claim in which relief can be granted.

65. Defendant raises and preserves any applicable State immunities, including, but not limited to, those contained in West Virginia Code § 29-12A-1, et seq. and in the West Virginia Constitution.

66. To the extent that any of the following affirmative defenses are applicable, based upon the evidence adduced in this matter, Defendant invokes the

following defenses of improper venue, lack of personal or subject matter jurisdiction, comparative negligence, assumption of the risk, comparative assumption of the risk, unclean hands, sudden emergency, waiver, estoppel, failure of consideration, fraud, illegality, laches, collateral estoppel and/or issue preclusion, statute of limitations and repose, res judicata, failure to comply with and follow and/or exhaust administrative remedies and insufficient process and insufficiency of service of process.

67. Defendant raises and preserves each and every defense set forth in Rules 8, 9, and 12 of the West Virginia Rules of Civil Procedure, and further reserves the right to raise such additional defenses as may be appropriate following further discovery in this case.

68. The actions or inactions of Defendant and its agents and employees were not the proximate cause of Plaintiffs' alleged injuries and damages.

69. Defendant is immune from suit in this case beyond the limits of its liability coverage or for which coverage does not apply.

70. Plaintiffs' alleged damages were the causal result of Plaintiffs' contributory and/or comparative negligence and/or the negligent acts or omissions of persons other than Defendant. Defendant is free from negligence, or Defendant's negligence, if any, does not equal or exceed the negligence of Plaintiffs and others.

71. Defendant asserts that the injuries and damages of which Plaintiffs complain were not caused by any acts and/or omissions of Defendant, instead by the intervening acts and/or omissions by other persons over which Defendant has no control.

72. Defendant is immune from punitive damages.

73. The alleged conduct of Defendant did not increase the risk of harm to Plaintiffs and, as such, the Complaint should be dismissed.

74. Defendant asserts all immunities available to it under West Virginia Code § 29-12A-5 or otherwise under the law, as if all such immunities were fully set forth herein, verbatim.

75. Defendant reserves the right to file additional affirmative defenses, counterclaims, cross-claims, and/or third-party claims if a sufficient factual basis therefore is developed through continuing investigation and discovery.

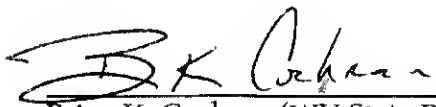
76. Defendant denies that it owed any affirmative duty or standard of care with respect to Plaintiffs.

77. Defendant denies that it breached any affirmative duty or standard of care with respect to Plaintiffs.

WHEREFORE, Defendant respectfully requests that plaintiffs' complaint be dismissed, with prejudice; that the relief requested therein be denied; and, that defendant be awarded his costs and attorney's fees.

MUNICIPAL WATER WORKS, a
Political subdivision,

By Counsel.



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